



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOP/168949

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 22, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on October 15, 2015, at Waukesha, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly seeks to recover an overissuance of FS benefits from the Petitioner in the amount of \$1,914 for the period of December, 2014 – February, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Kathy Jones

Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On September 2, 2014, the Petitioner's wife JK filed an online change report with the agency. She reported the Petitioner in her household. No income was reported for the Petitioner.

3. On September 8, 2014, the Petitioner started new employment.
4. On September 22, 2014, the agency issued a Notice of Decision to JK at the address on [REDACTED]. It notified the Petitioner's wife that her household would receive FS benefits of \$638/month for a household of five, including the Petitioner. The notice indicated that the FS benefit allocation was based on JK's income from Culver's of \$1,407.24/month and rent of \$1,200/month. The notice also informed the Petitioner that she must report to the agency by the 10<sup>th</sup> day of the next month if her household income exceeds \$2,325.83.
5. In October, 2014, the household income exceeded the reporting requirement. The Petitioner and JK were required to report income to the agency by November 10, 2014. This would affect FS benefits beginning December, 2014.
6. On January 15, 2015, JK completed a FS renewal. She did not report the Petitioner's income or an increase in her earned income.
7. On February 19, 2015, the agency issued a Notice of FS Overissuance and worksheet to the Petitioner and JK at the [REDACTED] address. It notified the Petitioner and JK that the agency intends to recover an overissuance of FS benefits in the amount of \$1,914 for failure to report income for the Petitioner. The notice also informed the Petitioner of the right to file an appeal of the agency determination by requesting a hearing within 90 days of the date of the notice.
8. On April 2, 2015, May 4, 2015 and June 2, 2015, the agency issued dunning notices to the Petitioner at the [REDACTED] address.
9. On July 17, 2015, the agency issued a notice of state tax refund intercept to the Petitioner at the [REDACTED] address. It notified the Petitioner that the state may intercept tax refunds for an unpaid public assistance debt. It further notified the Petitioner of the right to appeal that action by requesting a hearing within 30 days of the date of the notice.
10. On September 22, 2015, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### DISCUSSION

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action concerning FS must be filed within 90 days of the date of that action. 7 C.F.R., sec. 273.15(g). The petitioner's appeal was filed 215 days after the date of the action.

The Petitioner did not appear for the hearing. His wife JK did appear though she stated that she was of the understanding that he was going to appear for the hearing. She stated that when she renewed the FS case, the Petitioner was not in the household and that he was living in Milwaukee. He continued to use her address. She stated she did not report his income because he wasn't living there. She further testified about confusion regarding payments being made toward the repayment.

Based on the evidence, I conclude the Petitioner's appeal was untimely with regard to the overpayment. The Petitioner did not appear to supply evidence that he did not receive the notices or supply any other cause as to why his appeal was not filed within the deadline. The notices regarding FS benefits sent to the household clearly indicate that benefits were being issued for the Petitioner and also clearly indicate that no income was being counted for him. Neither the Petitioner or JK reported that he was out of the house and living elsewhere.

Based on the evidence, I conclude Petitioner's appeal is untimely for the FS overpayment and no jurisdiction exists for considering the merits of the case.

**CONCLUSIONS OF LAW**

The Petitioner's appeal is untimely.

**THEREFORE, it is**

**ORDERED**

That the Petitioner's appeal is dismissed.

**REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 16th day of November, 2015

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on November 16, 2015.

Waukesha County Health and Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability